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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,889	04/14/2004	Toby Wexler	20040414	7321
31346 7590 01/09/2009 ROBERT N. MONTGOMERY 109 BROWNLEE AVE. BROUSSARD, LA 70518-3021				
EXAMINER				
SMITH, KIMBERLY S				
ART UNIT		PAPER NUMBER		
3644				
MAIL DATE		DELIVERY MODE		
01/09/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of Abandonment**Application No.**

10/824,889

Applicant(s)

WEXLER, TOBY

Examiner

Kimberly S. Smith

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on ____.
- (a) ☐ A reply was received on ____ (with a Certificate of Mailing or Transmission dated ____), which is after the expiration of the period for reply (including a total extension of time of ____ month(s)) which expired on ____.
- (b) ☐ A proposed reply was received on ____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
- (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- (c) ☐ A reply was received on ____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
- (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
- (a) ☐ The issue fee and publication fee, if applicable, was received on ____ (with a Certificate of Mailing or Transmission dated ____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
- (b) ☐ The submitted fee of \$____ is insufficient. A balance of \$____ is due.
- The issue fee required by 37 CFR 1.18 is \$____. The publication fee, if required by 37 CFR 1.18(d), is \$____.
- (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
- (a) ☐ Proposed corrected drawings were received on ____ (with a Certificate of Mailing or Transmission dated ____), which is after the expiration of the period for reply.
- (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☒ The decision by the Board of Patent Appeals and Interference rendered on 14 August 2008 and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

See Continuation Sheet

/Kimberly S Smith/
Primary Examiner, Art Unit 3644

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Item 7 - Other reasons for holding abandonment:

1. It is noted in the communication with the mail date of 10/08/08 that the prosecution on the merits is closed. The Applicant was given a one month time period to present the allowed dependent claims in independent form. The Applicant did not comply and present claims 4 and 31 in independent form and as such, the claims have been cancelled. Claims 1-3, 5-7, 11, 14-17, 27-30, 38 and 39 are not allowable as the rejection of the claims was affirmed by the Board of Patent Appeals and Interference.

2. The rejection of claims 32-35 under 35 U.S.C. 102(b) and claims 36 and 37 under 35 U.S.C. 103(a) were reversed by the Board of Patent Appeals and Interferences (BPAI). However, claims 32-37 were rejected under 35 U.S.C. 112, first paragraph and claim 37 was rejected under 35 U.S.C. 112, second paragraph in the final rejection mailed 01/03/06. Note the Examiner's Answer, page 3 stating that the following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief. As such, while the rejection under 35 U.S.C. 103(a) and 102(b) were reversed by the BPAI, claims 32-37 were not deemed allowable in light of 35 U.S.C. 112 first and second paragraph. As there are no allowable claims in the case and the period of reply for responding to the rejection under 35 USC 112 first and second paragraph has expired, the case is now abandoned..